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ALEXANDER L. STEVAS,
CLERK

NO. 80-1807

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

AIDA SANCHEZ, Individually And As Representative And Administratrix Of The Children And Estate Of HELI RAMON SANCHEZ, DECEASED,
Petitioner

v.

LOFFLAND BROTHERS COMPANY, LOFFLAND BROTHERS DE VENEZUELA, C.A., LOFFLAND BROTHERS OF VENEZUELA, INC., LOFFLAND BROTHERS OF CANADA, INC. and MID-CONTINENT SUPPLY COMPANY,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

LOFFLAND RESPONDENTS' BRIEF IN OPPOSITION TO PETITION

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To The Honorable Justices of Said Court:

The Loffland Respondents submit that the Petitioners'[1] Petition for Writ of Certiorari should be denied and would respectfully show as follows:

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1. "Petitioners" seek damages under the Jones Act and general maritime law for a death. Since the Jones Act and the relevant statute prescribing the party entitled to sue under general maritime law, the Death on the High Seas Act, 46 U.S.C. § 761 *et seq.*, both vest the right to sue solely with the personal representative, the Petitioner will be referred to singularly in this Brief. The Petitioners' List of Parties is otherwise correct except that the third Loffland defendant's proper name is Loffland Brothers of Venezuela, Inc.

RESTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Respondents suggest, for purposes of clarity, that the questions presented by the Petitioner should be framed in the following manner and in the following order:

I. Whether the Courts below properly applied the holding of *Mobil Oil Corp. v. Higginbotham,* 436 U.S. 618 (1978), in holding that where Congress has enacted a statutory limitations period that the laches doctrine is inapplicable and that such limitations period must be applied.[2] (Pertinent to Petitioner's Questions 1, 2, 3 and 4 and Sections I, II and III of Petitioner's Argument and Reasons).

II. Whether the District Court correctly determined that the Respondents were not estopped to assert the statutes of limitations as a bar to this action? (Pertinent to Petitioner's Questions 5 and 6 and Section IV of Petioner's Argument and Reasons).

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2. "There is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted. In the area covered by the statute, it would be no more appropriate to prescribe a different measure of damages than to prescribe a different *statute of limitations,* or a different class of beneficiaries." 436 U.S. 618, 625; (emphasis supplied).

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v.

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LOFFLAND RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

A. Nature of the Case and Proceedings Below.

This matter concerns a wrongful death action instituted by a citizen and resident of Venezuela seeking recovery against her husband's former employer and others as a result of an incident which occurred on February 3, 1974, on Lake Maracaibo, in Venezuela. Suit was instituted in the Southern District of Texas in July, 1977. Petitioner later added additional parties and amended the Complaint, alleging causes of action based on the Jones Act, 46 U.S.C. § 688 (1970), and the general maritime law.

As part of her amended pleading, Petitioner alleged that the Respondents were estopped to assert any statute of limitations. The Petitioner's deposition was obtained, together with deposition testimony of Venezuelan employees of Loffland Brothers de Venezuela, C.A., and Motions for Summary Judgment were filed by Respondents. After examining the testimony of Mrs. Sanchez, the testimony of the other witnesses and the affidavits submitted in opposition to the Motion for Summary Judgment, the District Court granted the Motions, finding no genuine issue of fact presented which precluded the application of the appropriate statutes of limitations.

B. Statement of Facts.

Suit was instituted in this matter on July 27, 1977, by Aida de Sanchez. (R. 1). The basis of the action was an accident which occurred on February 3, 1974 (R. 2), and by later amendment, it became clear that the basis of the causes of action alleged against Respondents was the Jones Act and the general maritime law. (R. 102). Petitioner received full and complete compensation in Venezuela pursuant to the laws of that country from her husband's employer, Loffland Brothers de Venezuela, C.A., with whose representatives she conferred following his death. According to her own testimony, Petitioner was told that she was receiving all of the compensation which she was entitled to receive under her husband's employment contract and under Venezuelan law. (Sanchez deposition, p. 52, line 20 - p. 53, line 2). Additionally, Mrs. Sanchez categorically testified that no mention was made to her concerning American law or any statute of limitations under such law. (Sanchez deposition, p. 55, line 19 to p. 56, line 7). Her testimony revealed no

representations by Loffland Brothers de Venezuela, C.A.'s employees relating to any possible further settlement or to any statute of limitations. The record is completely devoid of any conversations, representations or any other contact between Mrs. Sanchez and representatives of the other defendants, Loffland Brothers Company, Loffland Brothers of Venezuela, Inc., Loffland Brothers of Canada, Inc. and Mid-Continent Supply Company.

SUMMARY OF ARGUMENT

I. The decisions of the District Court and the Court of Appeals for the Fifth Circuit were correctly based upon the Court's holding in *Mobil Oil Corporation v. Higginbotham,* 436 U.S. 618 (1978), and are not in conflict with that opinion, nor with the Court's opinions in *American Export Lines v. Alvez,* No. 79-1, ____U.S. ____, 64 L.Ed.2d 284, 100 S.Ct. 1673 (1980); *Moragne v. States Marine Lines,* 398 U.S. 375 (1970); or *Sea-Land Services, Inc. v. Gaudet,* 414 U.S. 573 (1974).

It is undisputed that the case is one which was filed more than three years after the incident in question and is one which is based on the Jones Act and general maritime law. The Jones Act statute of limitations is three years, 45 U.S.C. § 56, (1970), and the two year statute of limitations of the Death on the High Seas Act, 46 U.S.C. § 763 (1970), is applicable to the general maritime law contentions as reflected by the Court's decision in *Mobil Oil Corporation v. Higginbotham,* 436 U.S. 618 (1978). The general maritime law claim made by Petitioner, if viable, would be governed by the Death on the High Seas Act (DOHSA) since it occurred outside the coastal waters of the United States, to wit, in Venezuelan waters. 46 U.S.C. § 761 (1970).

The contentions made by Petitioner with respect to the application of the doctrine of laches by the Court of Appeals are simply untrue. The Court of Appeals for the Fifth Circuit in its opinion clearly holds, quite properly, that the statutes of limitations bar the claims and notes in passing that even if laches were proper consideration, that DOHSA would provide the analogous time reference and would require explanation by the Petitioner relating to the delay. The decision from the Second Circuit, *Public Administrator of the County of New York v. Angela Compania Naviera, S.A.*, 592 F.2d 58 (2d Cir. 1979), *writ dism'd* 443 U.S. 928 (1979), as was noted in the Fifth Circuit opinion below, is stated in the Second Circuit opinion to be one based on the involvement of nonstatutory remedies, and, thus, one clearly distinguishable from this matter which involves statutes which prescribe specific limitations periods. The *Alvez, Moragne* and *Gaudet* cases likewise involve incidents occurring in coastal waters and, thus, claims to which specific statutory language was not directed. Moreover, any need for review of the issue presented herein by this Court, in view of passage of the uniform three year statute of limitations for personal injury or death arising from a maritime tort, 46 U.S.C. 763a, 94 Stat. 1525 (October 6, 1980), is virtually destroyed since that statute will clearly apply to any new actions of this type, and the Court has already made clear its views concerning prior actions in the *Higginbotham* opinion.

II. The Petitioner's attempts to raise an issue on estoppel sufficient to preclude summary judgment fell short of that required to raise a genuine valid issue upon which it could be concluded that any of the Defendants below were guilty of conduct sufficient to

estop their applying the relevant statutes. The cases which have considered the estoppel argument reflect that there must be (1) an affirmative statement that the statutory period to bring the action was longer than it actually was, or (2) promises to make a better settlement of the claim if plaintiff did not bring suit, or (3) comparable representations and conduct. *Burke v. Gateway Clipper, Inc.*, 441 F.2d 946 (3d Cir. 1971). The testimony of the Petitioner was insufficient to raise such issues, and the subsequent affidavits submitted by Petitioner from her brother and son failed to raise a genuine issue of fact in this regard, as well, for they in no way reflected any reliance by Petitioner on any statements of Respondents in failing to bring suit within the statutory period. The Courts below properly applied the legal rationale of the *Burke* Court and the Court in *Glus v. Eastern District Terminal,* 359 U.S. 231 (1959). The basic determinations made by the District Court and already reviewed by the Court of Appeals initially and on Motion for Rehearing do not warrant review by this Court.

ARGUMENT AND AUTHORITIES

I. THE LOWER COURTS PROPERLY APPLIED THE STATUTES OF LIMITATION TO THIS CASE.

Petitioner's causes of action are based on the Jones Act, 46 U.S.C. § 688 (1970) and the general maritime law. The general maritime law claim, however, is governed by the provisions of the Death on the High Seas Act, 46 U.S.C. § 761 et seq. (1970), since the incident occurred outside U.S. coastal waters. *Mobil Oil Corp. v. Higginbotham,* 436 U.S. 618 (1978). The incident occurred in

Venezuela, on Lake Maracaibo, a body of water connected to the sea and upon which oceangoing vessels sail and on which there is oil drilling activity. The statutes of limitations applicable to the causes asserted bar recovery by the Petitioner, for they read as follows:

THE JONES ACT

The applicable statute of limitations with respect to the Jones Act is contained in 45 U.S.C. § 56 (1970) which provides:

> No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

DEATH ON THE HIGH SEAS ACT

The applicable statute of limitations is found in 46 U.S.C. § 763 (1970) and provides:

> Suit shall be begun within two years from the date of such wrongful act, negligence or default. . . .

The statutory provisions set forth above clearly and completely bar any action filed on behalf of anyone, including Petitioner, the wife of the decedent involved in this matter, and the causes of action cannot be maintained, even if applicable.[3]

A. A Conflict with Higginbotham Does Not Exist.

The Court has recently held that insofar as a general maritime law claim for death arising outside the coastal

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3. Respondents do not admit that the Petitioner has any such cause of action and have reserved jurisdiction, venue and choice of law questions, which would require additional extensive discovery, since the entire matter is disposed of in a simpler manner on the limitations question.

waters of the United States is concerned, the limitations period prescribed in the Death on the High Seas Act applies. We quote from *Mobil Oil Corporation v. Higginbotham*, 436 U.S. 618 (1978):

> We realize that, because Congress has never enacted a comprehensive maritime code, admiralty Courts have often been called upon to supplement maritime statutes. The Death on the High Seas Act, however, announces Congress' considered judgment on such issues as the beneficiaries, the *limitations period*, contributory negligence, survival and damages.
>
> * * *
>
> There is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted. In the area covered by the statute, it would be no more appropriate to prescribe a different measure of damages than to prescribe a different *statute of limitations*, or a different class of beneficiaries. 436 U.S. 618, 625; (emphasis supplied).

It is abundantly clear from the statutory provisions and the Court's decision that the action here, based on events occurring outside the coastal waters of the United States, is barred since it was not commenced within the period prescribed by either statute relevant to the claims asserted.

B. There Is No Conflict With Alvez, Moragne Nor Gaudet.

Moreover, the Court's decisions in *Alvez*, *Moragne*, and *Gaudet* do not provide any basis for distinguishing this case from the *Higginbotham* case insofar as the

limitations point is concerned. Contrary to the assertions made in the Petition, the decision in *American Export Lines, Inc. v. Alvez*, No. 79-1, ____U.S.____, 64 L.Ed.2d 284, 100 S.Ct. 1673 (1980), casts no doubt with respect to the holding of *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618 (1978), and its relation to the case now before the Court. As Petitioner has noted, the *Alvez* case involved a situation distinctly different from the one before this Court, bearing on the question of damages in a factual situation where an accident had occurred in territorial waters of the United States. Here, of course, the accident occurred well outside the territorial waters of the United States, on Lake Maracaibo, Venezuela. Thus, the Death on the High Seas Act and Jones Act must provide the basis for and, thus, control from a limitations period standpoint, whatever, if any, remedy that the Petitioner would have under United States law, and the general maritime law theory of laches would not be applicable to their claim. The *Alvez* Court recognizes this in language quoted by Petitioner:

> To be sure, *Mobil Oil Corp. v. Higginbotham, supra,* construed DOHSA to forbid general maritime law supplementation of the elements of compensation for which the Act provides. But *Higginbotham* never intimated that the preclusive effect of DOHSA extends *beyond the statute's ambit.* 64 L.Ed.2d 284, 291 (emphasis supplied).

The *Alvez* opinion thereby reaffirmed the holding of *Higginbotham* that where DOHSA or the Jones Act provide the remedy, such enactments prescribe such matters as damages and the statute of limitations which are within "the statute's ambit." This view is supported by another quotation from *Alvez* which the Petitioner's attorney uses

in an effort to bolster Petitioner's contentions by appealing to the liberal nature of the maritime law which is noted to be predisposed to grant rather than withhold remedies with the proviso, however, quoting *Moragne, "when not required to withhold (them) by established and inflexible rules."* 64 L.Ed.2d 284, 291 (emphasis and parenthetical explanation supplied). As noted above, the *Higginbotham* opinion clearly reflects that matters such as a statute of limitations fall within the rules prescribed by the Death on the High Seas Act and the Jones Act, and petitioner's contention that a time bar determination should be based on the laches doctrine of the general maritime law is clearly incorrect. To paraphrase *Alvez,* each of the statutes upon which Petitioner must rely to state a cause of action include a limitations period which has been exceeded and which provides an established rule and reference requiring the withholding of whatever remedy may have been available prior to expiration of the statutory period.

Gaudet and *Moragne* likewise dealt with coastal waters situations and with damage issues under general maritime law, not with specific statutory language such as that with which we are here concerned. The Petitioner's arguments regarding laches and *Moragne* are based on the premise that DOHSA did not encompass a claim for death based on unseaworthiness, a premise recognized at least since the mid 1960's to be a false one. *Doyle v. Albatross Tanker Corp.*, 367 F.2d 465, 468 (2d Cir. 1966). *Moragne* only supplied a wrongful death remedy in coastal waters and in no manner altered DOHSA, which already governed death actions based on unseaworthiness outside the coastal waters, as *Moragne* itself recognizes. *Moragne* holds that DOSHA permits and, thus, incorporates not

only recoveries based upon neglect but also on the unseaworthiness of the vessel under the maritime law.

> The ruling (in *Gillespie v. United States Steel Corp.*, 379 U.S. 148 (1964)) thus does not disturb the seaman's rights under general maritime law, existing alongside his Jones Act claim, to sue his employer for injuries caused by unseaworthiness, (citation omitted) or for death on the high seas caused by unseaworthiness, (citations omitted). 398 U.S. 375, 396, n.12 (1970).

Moragne, therefore, merely supplied a wrongful death remedy in a coastal waters context where no such remedy had existed under the applicable state law and where DOHSA clearly did not apply, and at the same time recognized that DOHSA already encompassed the seaworthiness remedy.

C. There Is No Conflict With The Second Circuit Opinion In Angela

Neither does the Second Circuit decision cited by Petitioner, *Public Administrator of the County of New York v. Angela Compania Naviera, S.A.*, 592 F.2d 58 (2d Cir. 1979), *writ dism'd*, 443 U.S. 928 (1979) provides a basis for conflict, as Petitioner alleges, since the issue before that Court was stated to be one involving the proper time limitations period for a *nonstatutory* remedy for wrongful death. The Court so states:

> Until 1970 there existed no independent, nonstatutory remedy for wrongful death under the general maritime law. Now, however, a remedy exists. (Citing *Moragne*). In this appeal we are called upon to consider the proper time limitation for this (*Moragne*) cause of action. (Parenthetical explanation supplied). 592 F.2d 58, 59-60.

Thus, the Second Circuit characterizes for its decision an issue not involving the application of the Death on the High Seas Act or Jones Act but, instead, a question concerning the time limitation in a nonstatutory cause of action, a situation distinctly different from that before the Court here. Even there, of course, the Court determined that the two year DOHSA statute of limitations was the analogous period for determining the applicability of laches to the general maritime law death claim.

Accordingly, the statutes of limitations contained in the Jones Act and the Death on the High Seas Act correctly provide the basis for a dismissal on a limitations basis in this cause pursuant to the Court's holding in *Mobil Oil Corp. v. Higginbotham,* 436 U.S. 618 (1978). The Fifth Circuit Court of Appeals correctly applied the *Higginbotham* rationale to the facts before it and would be required to do so with respect to any similar situation with which it is presented in the future in view of the recent enactment of a uniform three year statute of limitations, as noted above. Even if, as Petitioner alleges, the *Angela* case could be viewed as a conflict with the Fifth Circuit opinion, the new statutory enactment will apply to virtually all cases with which the lower courts must hereafter deal, and a review of the holding of the Court in *Higginbotham* would not provide a basis for deciding any significant number of cases in the future.

II. THE LOWER COURTS PROPERLY FOUND NO ESTOPPEL ISSUE HAD BEEN RAISED BY PETITIONER.

In Section IV of the Petition, a review is sought of the holding of both Courts below concerning the conduct of the Defendant Loffland Brothers de Venezuela, C.A.,

about which Mrs. Sanchez testified at length as reflected in part by the testimony quoted in the District Court Memorandum and Order (Appendix 1 of the Petition). The legal test applied by the Courts below was in accord with the Court's opinion in *Glus v. Brooklyn Eastern District Terminal,* 359 U.S. 231 (1959) and that of other Courts in *Burke v. Gateway Clipper, Inc.,* 441 F.2d 946 (3d Cir. 1971), and *Holifield v. Cities Service Tanker Corp.,* 421 F.Supp. 131 (E.D. La. 1976) *aff'd,* 552 F.2d 367 (5th Cir. 1977). The myriad cases cited by Petitioner largely deal with situations closely analogous to the *Glus* case, being situations involving blatant misrepresentations with respect to the statute of limitations involved, misrepresentations of physicians employed by defendants or like misrepresentations. The conduct of Loffland Brothers de Venezuela, C.A., as testified to by the Petitioner, was examined by the District Court, was examined by the Circuit Court panel in the first instance and, again, on Motion for Rehearing, and the Courts correctly found no genuine issue of fact for determination insofar as the estoppel issue was concerned.

The testimony of Mrs. Sanchez is clear concerning the relevant issues:

> (1) Was there a misrepresentation with respect to the statute of limitations: Her testimony was as follows:
>
> Q. Nothing (was said by Loffland de Venezuela representatives) about how long you had to bring a lawsuit—how much time you had to bring a lawsuit in the U.S.?
>
> A. No.
>
> (Sanchez deposition, page 56, lines 4-7, parenthetical explanation supplied).

(2) Did Loffland promise her additional payments or a better settlement? Her testimony is clear, once again:

Q. Did (representatives of Loffland Brothers de Venezuela, C.A.) tell you that any additional money that you would receive would have to come from the social security scheme of Venezuela?

A. Yes.

(Sanchez deposition, page 55, lines 15-18, parenthetical explanation supplied).

The evidence in this case establishes simply that Loffland Brothers de Venezuela, C.A. paid full and complete compensation to the survivors as required by Venezuelan law. The decision in *Burke* makes it clear that this does not constitute a fraudulent or wrongful act or misrepresentation which will preclude any Respondent's reliance upon any statute of limitations. An employer does not commit a fraudulent or wrongful act or misrepresentation by paying compensation or by not informing the recepient that he or she may have other legal remedies. *See, e.g., Damiano v. Pennsylvania R. Co.,* 161 F.2d 534 (3d Cir. 1947), *cert. denied,* 340 U.S. 821 (1950). Indeed, here, the testimony is uncontradicated that the Venezuelan representatives themselves knew of no rights that Mrs. Sanchez could, even arguably, have under American law. (Sevillano deposition, page 49, line 24 to page 50, line 8; Lujan deposition, page 49, lines 3-9).

Petitioners imply that the employment by Loffland Brothers de Venezuela, C.A. of decedent's son was given in exchange for her cooperation in not instituting this action earlier. There is no dispute that the son was em-

ployed by Loffland Brothers de Venezuela, C.A. after his father's death, but at the same time, there is no evidence that such employment was given in exchange for forebearance on the Petitioner's part or for any consideration whatsoever except in exchange for a day's work on the part of the son.[4] If such circumstances are sufficient to estop Defendants from relying upon statutes of limitation, no death claim will ever be barred by limitations where the employer is compassionate enough to extend condolances to an employee's widow or later to employ a family member.

As the District Court noted, the only apparent attempt by Petitioner to raise a fact issue was in the form of the affidavit of her brother, Even Cardozo, which was obtained and filed well after the deposition of Mrs. Sanchez had been obtained and the Motion for Summary Judgment discussing the law applicable to this matter had been filed. That affidavit, however, as the District Court correctly noted, does not raise an issue of fact relevant to the estoppel issue. As the District Court held, there is no evidence that Mrs. Sanchez was misled by statements which Cardozo, but apparently not Mrs. Sanchez, allegedly heard. Additionally, Mrs. Sanchez seeks to contradict her own testimony with the affidavit of Cardozo, but the cases cited by Petitioner in support of such action's being sufficient to preclude summary judgment, *e.g. Adams v. The United States,* 392 F. Supp. 1272 (E.D. Wisc. 1975) and *Camerlin v. New York Central R. Co.,* 199 F.2d 698 (1st Cir. 1952), deal with situations in which deposition testimony of a witness was contradicted by that witness' own affidavit, not an affidavit of a third party, as is the case here.

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4. Sanchez deposition, page 53, line 10 to page 54, line 9.

The Court below correctly relied on *Holifield v. Cities Service Tanker Corp.*, 421 F. Supp. 131 (E.D. La. 1976), *aff'd*, 552 F.2d 367 (5th Cir. 1977), in noting that only genuine issues of fact are intended to preclude resort to summary judgment. The Court noted in *Holifield*:

> . . . the plaintiff must demonstrate that he actually was misled; . . . it is encumbent upon the Plaintiff to present material facts which, if true, would estop the assertion of the statute of limitations as a matter of law. *See Burke v. Gateway Clipper, Inc.*, 441 F.2d 946, 948-49 (3 Cir. 1971). 421 F. Supp. 131, 135.

In *Holifield*, it is noteworthy that the plaintiff sought to contradict his sworn prior statements, with the Court holding the following in that regard:

> Furthermore, from the standpoint of the policy and requirements of Rule 56 of the Federal Rules, we decline to allow the plaintiff to raise an issue of fact by contradicting his own sworn statement of an earlier date; it is only *genuine* issues of fact and not simply issues created by the self-contradictions of an opposing party that are intended to preclude resort to the device of summary judgment. 421 F. Supp. 131, 136 (emphasis in original).

Thus, the *Holifield* Court refused to allow the plaintiff's own affidavit and deposition testimony to contradict a prior sworn statement. Here, Mrs. Sanchez seeks to resurrect from the ashes of her own testimony an issue relating to her subjective belief, using a sworn affidavit of a third party relative which was obtained after she had testified categorically with respect to the relevant conversations. The Plaintiff's deposition testimony on the relevant points

is clear and simply raises no fact issue precluding summary judgment disposition of this matter.

The Courts below closely examined the conduct of the Respondents in light of the Court's opinion in *Glus* and the lower Courts' opinions in *Burke, Holifield* and the multiple cases cited by Petitioner. The circumstances related by Petitioner simply do not rise to the level sufficient to create an issue relevant to estoppel, and both Courts below correctly applied the law to the facts before them. The Court has previously addressed the legal test to be applied in the *Glus* case, and since the teachings of that case were correctly applied by the Courts below, the Court should not grant review on the estoppel issue which review would, in any event, be confined to the facts of this case and have limited future value in view of the Court's having already rendered the *Glus* opinion.

CONCLUSION

The District Court and the Court of Appeals correctly applied the law to the facts of this case. The *Higginbotham* rationale is applicable to this case which arose outside the territorial waters of the United States, and the statutes of limitation which form a part of the Death on the High Seas Act and Jones Act are applicable and render the Petitioner's claims untimely. The boot strap attempts to inject a fact issue with respect to the Defendant Loffland Brothers de Venezuela, C.A.'s conduct have been examined by the District Court and the Court of Appeals below, both of which reached the correct result that no issue upon which an estoppel could be based had been raised. Review by this Court is not called for in view of the Court having spoken previously in *Higginbotham* and *Glus* to the points raised by Petitioner and

in view of the recent enactment of a uniform statute of limitations covering maritime torts. Therefore, Respondents respectfully submit that the Petition should be in all things denied.

Respectfully submitted,

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Of Counsel:

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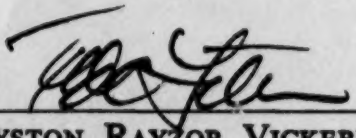
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Reply was mailed to Mr. Benton Musslewhite, 3506 Travis Street, Houston, Texas 77002, and to Mr. John P. Forney, Jr., Eastham, Watson, Dale & Forney, 947 Mellie Esperson Building, Houston, Texas 77002, on this 27th day of May, 1981.



Of ROYSTON, RAYZOR, VICKERY & WILLIAMS